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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,821	08/06/2003	Mickey L. Fong	P08007US00/RFH	6746
881	7590	06/08/2005	EXAMINER	
STITES & HARBISON PLLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314			SINGH, SUNIL	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/634,821	Applicant(s) FONG, MICKEY L	
	Examiner Sunil Singh	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 25-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Newly submitted claims 25-33 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 1-18 are directed to subcombination of a floating device; claims 19-33 are directed to the combination of a barrier arrangement. Claims 25-33 are evidenced claims that having "an outer solid water impermeable elongate tubular shell member, an inner solid water impermeable elongate tubular shell member concentric with said outer tubular shell member and spaced therefrom so as to form a cavity therebetween; a floatation medium within said cavity and a floatation medium within said inner tubular shell member" is not required for patentability. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 25-33 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 16-17, 20-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 16 is confusing because it appears to be claiming the same structure as in claim 15, in particular, the "open framework including longitudinal extending members".

The preambles of claims 20-24 do not commensurate with the preamble of claim 19 from which they depend from.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pugliese in view of Francois (US 3598275).

Pugliese discloses a floatation device for use as a barrier, said floatation device comprising an outer solid water impermeable elongate tubular shell member (b) an inner solid water impermeable elongate tubular shell member (c) concentric with said outer tubular shell member and spaced therefrom so as to form a cavity therebetween; a floatation medium within said cavity (see page 1 col. 55+), and a floatation medium (see page 1 col. 55+) within said inner tubular shell member. (re claim 10), the connection member is considered as any structure at the ends of the ship. (re claim 11), the ship is considered as the mounting member and the superstructure (see page 1 line 85+) is considered as the superstructure.

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Pugliese discloses the invention substantially as claimed. However, Pugliese is silent about having a non-liquid floatation medium in the cavity and is also silent about the inner shell being made out of plastic polymer material. Francois teaches having a non-liquid floatation medium (25) in a cavity and inner shell being made out of plastic polymer material (24). It would have been considered obvious to one of ordinary skill in the art to modify Pugliese by substituting the cavity means and inner shell material as taught by Francois for the cavity means and inner shell material disclosed by Pugliese in order to increase protection of the hull without having messy oil spill in the event the structure is damaged and prevent deterioration of the shell member.

6. Claims 7-9, 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pugliese in view of Francois as applied to claims 6 and 1 respectively above, and further in view of Wooley et al. '325.

Pugliese (once modified) discloses the invention substantially as claimed. However, the (once modified) Pugliese is silent about the inner floatation member being foam.

Pugliese is also silent about including a downward barrier and outwardly protective barrier elements. Wooley et al. teaches a floatation device for use as a barrier, said floatation device comprising a foam floatation medium (21) within said inner tubular member, a downward barrier (46) and outwardly protective barrier elements (19).

It would have been considered obvious to one of ordinary skill in the art to further modify the (once modified) Pugliese by making the inner floatation member out of foam and to include a downward barrier and outwardly protective barrier elements as taught by Wooley et al. in order to increase ship protection.

7. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Potter (US 3952521) in view of Pugliese.

Potter discloses a floating barrier device comprising at least one floatation device comprising pontoon structure (14), an upwardly projecting superstructure (12), comprising an open framework comprising at least two triangular members interconnected by longitudinally extending members, mounted on said at least one floatation device (see Fig. 1). Potter discloses the invention substantially as claimed. However, Potter lacks pontoon structure having a solid outer water impermeable tubular shell member, an inner solid water impermeable tubular shell member defining an inner space disposed within, and spaced from, the outer member so as to define a cavity therebetween, a floatation medium disposed in said cavity, and a floatation medium disposed in said inner space. Pugliese teaches pontoon structure having outer solid water impermeable elongate tubular shell member (b) an inner solid water impermeable elongate tubular shell member (c) concentric with said outer tubular shell member and spaced therefrom so as to form a cavity therebetween; a floatation medium within said cavity (see page 1 col. 55+), and a floatation medium (see page 1 col. 55+) within said inner tubular shell member. It would have been considered obvious to one of ordinary skill in the art to modify Potter by substituting the pontoon means as taught by Pugliese for the pontoon means disclosed by Potter since such modification provides pontoon structure that protects the superstructure from being damaged from impact.

With regards to claim 17, it would have been considered obvious to modify Potter to include at least one sign (such as warning lights) in order to notify other water borne vessels.

8. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Potter in view of Pugliese as applied to claim 15 above, and further in view of Kasai et al..

Potter (once modified) discloses the invention substantially as claimed. However, the (once modified) Potter lacks a plurality of floatation devices connected end to end by a cable means. Kasai et al. teaches a plurality of floatation devices connected end to end by a cable means (36). It would have been considered obvious to one of ordinary skill in the art to further modify the (once modified) Potter by including a plurality of floatation devices connected end to end by a cable means as taught by Kasai et al. in order to cover a wider area.

9. Claims 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Potter (US 3952521) in view of Pugliese and Kansai et al.

Potter discloses a floating barrier device comprising at least one floatation device comprising pontoon structure (14), an upwardly projecting superstructure (12), comprising an open framework comprising at least two triangular members interconnected by longitudinally extending members, mounted on said at least one floatation device (see Fig. 1). Potter discloses the invention substantially as claimed. However, Potter lacks pontoon structure having a solid outer water impermeable tubular

shell member, an inner solid water impermeable tubular shell member defining an inner space disposed within, and spaced from, the outer member so as to define a cavity therebetween, a floatation medium disposed in said cavity, and a floatation medium disposed in said inner space. Further, Potter is silent about including a plurality of barrier units connected together. Pugliese teaches pontoon structure having outer solid water impermeable elongate tubular shell member (b) an inner solid water impermeable elongate tubular shell member (c) concentric with said outer tubular shell member and spaced therefrom so as to form a cavity therebetween; a floatation medium within said cavity (see page 1 col. 55+), and a floatation medium (see page 1 col. 55+) within said inner tubular shell member. Kasai et al. teaches a plurality of floatation devices connected end to end by a cable means (36). It would have been considered obvious to one of ordinary skill in the art to modify Potter by substituting the pontoon means as taught by Pugliese for the pontoon means disclosed by Potter since such modification provides pontoon structure that protects the superstructure from being damaged from impact. Also, it would have been considered obvious to one of ordinary skill in the art to modify Potter by including a plurality of floatation devices connected end to end by a cable means as taught by Kasai et al. in order to cover a wider area.

With regards to claim 20, it would have been considered obvious to modify Potter to include at least one sign (such as warning lights) in order to notify other water borne vessels.

With regards to claim 22, the "further floatation device" is considered as the middle unit, when three units are connected together.



10. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Potter in view of Pugliese and Kasai et al. as applied to claim 19 above, and further in view of Good.

Potter (as modified above) discloses the invention substantially as claimed. However, Potter (as modified above) lacks connecting means having upright pivot tubes. Good teaches connecting means having upright pivoting tubes (see Fig. 4). It would have been considered obvious to one of ordinary skill in the art to further modify Potter (as modified above) to include connecting means having upright tubes as taught by Good in order to reduce the chance of the units separating.

#### ***Response to Arguments***

11. Applicant's arguments filed 3/29/05 have been fully considered but they are not persuasive. Applicant argues that his floatation device is "free floating floatation unit" while the tanks of Pugliese is not. This argument is moot now, since Pugliese has been modified by Francois to include foam in its cavity which would enable the tanks to be free floating. The argument that the floatation medium in the outer cavity of Pugliese is not non-liquid is moot in view of new grounds of rejection. In particular, Pugliese has been modified by Francois to include foam in its outer cavity. Arguments with regards to claims 15 and 19 are also moot, since a new grounds of rejection has been presented. The open frame work including at least two triangular longitudinally interconnected frame members is taught by Potter.

**Conclusion**

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sunil Singh  
Primary Examiner  
Art Unit 3673



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